



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: Curry Contracting Company, Inc.

File: B-254355

Date: December 13, 1993

Hubert J. Bell, Jr., Esq., and Lisa Pender Morse, Esq., Smith, Currie & Hancock, for the protester, Walker L. Evey, National Aeronautics and Space Administration, for the agency. Christina Sklarew, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly eliminated proposal from competitive range is denied where record shows that agency reasonably concluded, in light of competing proposals, that protester's proposal had no reasonable chance of award.

DECISION

Curry Contracting Company, Inc. protests the National Aeronautics and Space Administration's (NASA) exclusion of its proposal from the competitive range under request for proposals (RFP) No. 10-93-0043, which was issued by NASA's John F. Kennedy Space Center in Cape Canaveral, Florida. The protester contends that any weaknesses in its proposal could have been addressed during discussions and could have been easily corrected. We deny the protest.

The RFP, which was sent to 200 firms in April 1993, sought proposals on a cost-plus-fixed-fee basis for a comprehensive operations support contract to cover such services as the management, operation and maintenance of facilities, systems, equipment, support services, and specified technical/administrative operations for the Kennedy Space Center/Vandenberg Launch Site in California.

The RFP stated that award would be made to the offeror whose proposal was determined to be the most advantageous to the government, cost and other factors considered. The RFP advised offerors that proposals would be evaluated in accordance with the following factors: Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations; however, the RFP stated that only the

Mission Suitability Factor would be numerically weighted and scored.¹ The RFP stated that cost realism would be considered in evaluating the Mission Suitability factor and that any risks associated with cost, schedule, and performance or technical aspects would also be evaluated. The Mission Suitability factor included a Technical subfactor, for assessing the degree of the offeror's overall comprehension of the work to be performed, the effectiveness of the approach to accomplish the work, and the adequacy of the skills and staffing proposed for performing the work; and a Management Plan subfactor, under which the Source Evaluation Panel (SEP) would assess the offeror's overall management concept, including its management approach and key personnel, and its total compensation plan. Finally, the general cost factor included consideration of the validity, realism and adequacy of each cost proposal and the probable cost of performance.

Eleven firms, including the protester, submitted timely proposals. The SEP evaluated the 11 initial proposals that had been submitted and prepared a competitive range determination for approval by the Source Selection Official (SSO). The SEP determined that the competitive range should include only the proposals with the five highest scores, and the SSO concurred. Curry's proposal was among the six remaining proposals that were excluded.

The contracting officer advised Curry by letter that its proposal had been excluded from the competitive range, explaining that the range included "all proposals which have a reasonable chance of being selected for contract award." The letter identified the major Mission Suitability factor weaknesses that the SEP had found in Curry's proposal as: (1) insufficient information concerning Curry's total compensation plan; (2) lack of rationale for the number and placement of personnel to perform the work; and (3) conflicts in Curry's proposed organizational functions. The letter concluded that: "These weaknesses, combined with an absence of significant major strengths, were the major factors in the determination that your proposal did not have a reasonable chance of being selected for contract award."

¹In evaluating this factor, the RFP stated that the agency would focus on the offeror's understanding of the requirements, proposed technical, and management approaches to meeting the requirements, and the offeror's ability to actually perform as proposed.

This protest followed.

Curry argues that its exclusion from the competitive range was improper and unreasonable because the weaknesses identified in its proposal were administrative and informational in nature and do not concern Curry's capability of performing the contract.

The Federal Acquisition Regulation (FAR) requires contracting officers in a negotiated procurement to determine which proposals are in the competitive range for the purpose of conducting written or oral discussion. FAR § 15.609(a). Further, the FAR provides that the competitive range shall be determined on the basis of cost or price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award. Id. However, even where a proposal is fully acceptable technically (or could be rendered so through discussions), it may be excluded from the competitive range if, in light of the competing proposals, the contracting officer determines that the proposal has no reasonable chance of award. Paragon Imaging, Inc., B-249632, Nov. 18, 1992, 92-2 CPD ¶ 356.

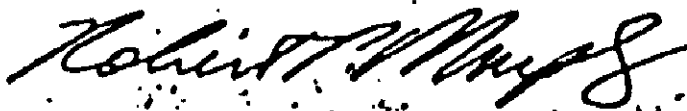
The record shows that of the 11 proposals that were submitted, Curry's proposal was ranked seventh based on technical scores for Mission Suitability. The agency explains in its report that the relatively low score that Curry's proposal received was based not only on the proposal's weaknesses, which the agency admits were relatively minor, but also on the absence of any significant major strengths in the proposal. Based on the relatively low scores received by the seven lowest scored proposals, and the strengths that were found in the highest five proposals, the SEP determined that it would not be fair or reasonable to subject the lower ranked offerors to the added expense of going through the final competition. This conclusion was further supported, in Curry's case, by the fact that its proposal did not offer any price advantage that might offset its low technical score.

We think the agency's determination was reasonable. Even without the admittedly minor deficiencies in Curry's proposal, in the evaluators' view the proposal was technically inferior to several others because it offered no particular strengths while the other proposals did. In this regard, the SEP found that five other offerors demonstrated a more complete understanding of the RFP's requirements and offered certain advantages in their approaches to the work, such as an automated work control system that could be adapted to this contract, an automated reporting system and innovative management techniques.

The protester has not challenged the evaluation of these other offers and we find nothing in the record which would support a conclusion that these evaluation results were unreasonable. Therefore, given the technical superiority of several other firms and the fact that there was no advantage to Curry's price, the agency could properly conclude that Curry's proposal had no reasonable chance for award.

The protester also complains that the agency projected a "probable cost" for Curry's proposal, which it took into consideration during its competitive range determination. The protester contends that the agency had no basis for making any assumptions regarding a price that Curry might have submitted as a best and final offer. However, the "probable cost" merely reflected an adjustment to cover the corrections (such as increasing the staffing level) that the agency deemed would be necessary. This adjustment did not alter Curry's competitive standing.

The protest is denied.


for James F. Hinchman
General Counsel